

REMARKS

Status of the Claims

Upon entry of the instant amendment, claims 1 and 4-13 remain pending in the above-identified application and stand ready for further action on the merits.

In this Amendment, claim 1 has been amended to recite limitations previously recited in claims 2 and 3 (and claims 2 and 3 have been canceled to prevent a redundancy with amended claims). Claims 5-8 and 11-13 have also been amended to further clarify the present invention by removing the indefiniteness as indicated in connection with the rejection under 35 U.S.C. § 112, 2nd paragraph in the Office Action.

Accordingly, the present amendments to the claims do not introduce new matter into the application as originally filed. As such entry of the instant amendment and favorable action on the merits is earnestly solicited.

Claim Rejection Under 35 U.S.C. § 112, 2nd Paragraph

Claims 1-13 stand rejected under 35 U.S.C. § 112, 2nd paragraph because of indefiniteness. This rejection is respectfully traversed.

In this response, claims 1, 7, 8 and 11 have been amended to correct or remove the indefiniteness. In view of the amendments, the rejection should be overcome. Applicants respectfully request reconsider and withdrawal of the rejection.

Claim Rejections under 35 U.S.C. §103

Claims 1-5 and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Elias US '126 (US 4,209,126) in view of Smith US '084 (US 4,171,084) and Knudsen US '941 (US 4,044,941).

Claim 6 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Elias US '126 in view of Smith US '084, Knudsen US '941 and Maruhashi US '366 (US 4,551,366).

Claim 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Elias US '126 in view of Smith US '084 and Knudsen US '941.

Claim 8 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Elias US '126 in view of Hawley US '132 (US 3,095,132).

Claims 1-5, 7, 9, 10 and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Collins UK '099 (UK 2,236,099) in view of Kleemola US '120 (US 5,236,120).

Claim 6 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Collins UK '099 in view of Kleemola US '120 and Maruhashi US '366.

Claim 8 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Collins UK '099 in view of Kleemola US '120 and Hawley US '132.

The rejections are respectfully traversed. Reconsideration and withdrawal of the rejections are respectfully requested based on the following considerations.

Nonobviousness over the Combination of the Cited References

As recited in claim 1, in the claimed cup package, i) the mantle (3) of the cup (1) is enlarged conically upwardly, ii) the cup collar (5) is enlarged conically downwardly, and iii) the lid rim (8) is enlarged conically downwardly.

However, none of Elias US '126, Smith US '084 and Knudsen US '941 discloses a cup having the claimed structures of the collar, the lid and the rim. In view of the amendments currently made to claim 1, where the cup collar and the lid rim have a conical form which is enlarging downwardly and the collar is fixed to the adjacent rim by heat-sealing, the present invention is further defined over the combination of the cited references.

Elias US '126 at best discloses a cup having a rolled upper rim (also known as "mouth roll"), but no conically shaped collar (see *e.g.*, Figs. 3 and 9 thereof). Further, the cup mantle of Elias US '126 is straight, *i.e.* strictly vertical, not conically enlarging. Also, the mouth roll of Elias US '126 does not diverge from the mantle, as the present invention does. The cap package of Elias US '126 has a lid ("sealed closure member") 2 and a plastic overcap 50, which is attached by pressing upon the cup mouth roll and the lid. Although the overcap has a conically downwardly expanding rim, it is not sealed to the cup mouth roll in Elias US '126. Thus, the parts of Elias US '126 have entirely different configurations from the present invention. Due to the significant differences, Elias US '126 does not provide one skilled in the art with motivation to arrive at the claimed structure.

Smith US '084 discloses a structure, which is similar to that of Elias US '126. A cup package of Smith US '084 has a straight cup mantle, a cup mouth roll, a lid sealed to the mouth roll, a ring upon the circumference of the lid, and the cup mouth roll, in place of the overcap of Elias US '126. The ring has a downward rim, but the rim does not have a conically expanding portion (see *e.g.*, Fig. 1 thereof), similar to the overcap rim of Elias US '126.

Thus, even if Elias US '126 and Smith US '084 are combined, one skilled in the art cannot reach the present invention since both of Elias US '126 and Smith US '084 fail to disclose or suggest the claimed structure, as explained above.

Even Knudsen US '941 fails to disclose or suggest the claimed structure. Knudsen US '941 shows a combination of a cup, a sealed inner lid (see "M" in Fig. 4) and an overcap (see "L" in Fig. 4), which is similar to Elias US '126. Instead of a mouth roll or a conically expanding collar, the cup mouth of Knudsen US '941 has a curved shape. The inner lid is sealed on the top of the curved cup perimeter. The lid of Knudsen US '941 does not have a downwardly expanding rim. The overcap having a rim, which expands downwardly but in a substantially vertical direction, is forced over the curved cup mouth. Thus, the overcap is not bonded to the cup collar in the manner of the present invention.

Therefore, even in view of Knudsen US '941 in combination with Elias US '126 and Smith US '084, said combination does not provide one skilled in the art with motivation to reach the present invention.

In order to make up for the deficiencies of Elias US '126, Smith US '084 and Knudsen US '941, additional references are cited in the Office Action. However, the additional references also fail to disclose or suggest the claimed features of the present invention. For example, at paragraph "7." of the Office Action, it is alleged that claim 1 is obvious over the combination of Collins GB '099 and Kleemola US '120. However, the combination of Collins UK '099 and Kleemola US '120 also fails to disclose or suggest the claimed structure as recited in claim 1. Further, the present invention belongs to the field of paper technology, relating to an article made of a fiber-based material (*e.g.*, paper or board). In contrast, Collins GB '099 relates to the field of plastics (*e.g.*, a thermoformed container of polystyrene, PVC, polypropylene) (see page 6, lines 30-34 thereof). Thus, Collins GB '099 is nonanalogous art as it relates to the present invention. The thermoformed container of Collins GB '099 does not provide one skilled in the art with any motivation to arrive at the present invention.

Furthermore, the difference between the present invention and Collins GB '099 is not merely a matter of materials chosen for the package. In the present invention, the mantle of the cup, which is of a fiber-based material, is bent downward at the mouth of the cup to form a collar. Such a bend does not exist in the plastic cup of Collins GB '099. The cup of Collins GB '099 at best has a flat rim portion (6), which separates the mantle or side wall (3) of the container from the downward collar (14) (see *e.g.*, Figs. 1 and 2 thereof). Even if the configuration of the rim and collar parts of the container of Collins GB '099 looks complicated, it is relatively easy to form such a structure by thermoforming thermoplastic material. On the other hand, such a thermoforming manner cannot be conceivably applied in forming fibrous board (*e.g.*, board), which is employed in the present invention. Thus, Collins GB '099 does not provide any basis to arrive at the present invention.

The present invention has advantageous properties in, for example, employment of the downwardly bent collar of the cup, which can be produced relatively simply, by bending a board blank with the shape of a truncated circular section, followed by rounding and sealing the blank to the configuration of the cup with a collar. Also, in the present invention, the board lid can be made to have a rim matching the collar, so that the adjacent rim and the collar provide a base for the heat seal sufficiently distanced from the product contained in the cup package.

Regarding Kleemola US '120, the cited reference does not disclose a collar, which diverges from the mantle of the container as in the present invention, to create distance from the container part defined by the mantle. The bent collar of Kleemola US '120 is instead lying tightly against the top part of the mantle, tapering towards the mouth of the container (see *e.g.*, Figs. 3-5 thereof). The tapering collar receiving the heat-sealed lid disadvantageously remains in

proximity of the product contained in the package when the full volume of the container part is occupied by the product.

Thus, one skilled in the art would not be motivated to improve a cup of fibrous material such as paperboard (Kleemola US '120) utilizing plastic thermoforming technology (Collins GB '099). Thus, there is no rationale and/or reasonable expectation of success of arriving at the present invention based on the combination of Collins GB '099 and Kleemola US '120, even in view of the other cited references, which also fail to disclose or suggest the claimed invention.

As explained above, there is no rationale and/or reasonable expectation of success based on the combination of the cited references, by which one skilled in the art could arrive at the present invention as claimed, since the cited references fail to disclose or suggest each of the instantly claimed features, as explained above. Thus, it is respectfully submitted that the present invention (claim 1 and dependent claims thereof) is not obvious over the combination of the cited references.

Based on the foregoing considerations, Applicants respectfully request that the Examiner withdraw the rejections.

Allowable Subject Matter

Applicants appreciate the Examiner's courtesy in indicating that claims 11 and 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112, second paragraph and to include all of the limitations of the base claim and any intervening claim.

CONCLUSION

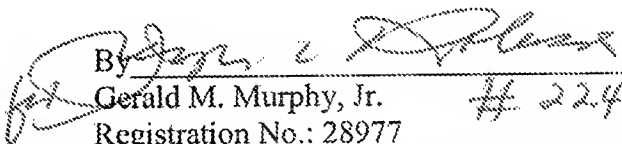
Based upon the amendments and remarks presented herein, the Examiner is respectfully requested to issue a Notice of Allowance clearly indicating that each of the pending claims is allowed.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Toyohiko Konno, Reg. No. L0053 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Director is hereby authorized in this, concurrent, and future replies to charge any fees required during the pendency of the above-identified application or credit any overpayment to Deposit Account No. 02-2448.

Dated: 5/3/11

Respectfully submitted,

By 
Gerald M. Murphy, Jr. # 22463
Registration No.: 28977
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road, Suite 100 East
P.O. Box 747
Falls Church, VA 22040-0747
703-205-8000